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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,106	11/15/1999	CHARLES S. TAYLOR	GUID-003DIV2	2546

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/440,106**

Applicant(s)  
**Taylor et al**

Examiner  
**Robert Nasser**

Art Unit  
**3736**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/28/2002 and 8/5/2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2, 3, 7-9, 11, 12, 14, and 17-40 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 7, 8, 11, 12, 14, 17-34, and 37-40 is/are rejected.
- 7) ☒ Claim(s) 9, 35, and 36 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 2, 3, 7, 8, 17-22, 23, and 25-31 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wright ~~et al.~~, noting that the housing is dome shaped. Specifically, the examiner notes that the cross section shown in figures 2-4 is disclosed to be semicircular, which is dome-shaped. Therefore, it is a dome-shaped housing.

Claims 11, 12, 14 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Vierra et al. Vierra et al shows 2 blocks 15 and 17 connected to each other by a pivot, each having a plurality of ports 73 in their bottom surface, which can be connected to a source of suction. While the suction is for a different purpose than applicant's, the reference still discloses the identical structure and therefore anticipates the claims.

Claims 11, 12, 14 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Slater. Slater shows two blocks 18a and 18b connected to each other by a pivot, each having a plurality of ports 29a and 29b in their bottom surface. which can be connected to a source of suction. While the device is intended for a different purpose than applicant's, the reference still discloses the identical structure and therefore anticipates the claims.

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Claims 25-31 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Borst et al.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Borst et al in view of Wright et al. In figure 13, Borst shows a circular hosing with suction ports. It is not dome-shaped. Wright shows a circular paddle with a dome shaped housing. It would have been obvious to modify Borst to replace the paddle with the dome shaped paddle, as it is merely the substitution of one known equivalent for another.

Claims 32-34 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra et al in view of Borst et al. Vierra shows all of the features of the invention, except that the feet 15 and 17 frictionally engage the heart, rather than use suction. Borst teaches that suction is an alternate way for such foot to engage the heart. Hence, it would have been obvious to modify Vierra et al to use suction, as it is merely the substitution of one known engaging means for another.

Claims 9, 35, and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Applicant's arguments filed 7/23/2002 and 8/5/2002 have been fully considered but they are not persuasive. .

Applicant has argued that Wright does not teach a dome shaped device. The examiner notes that the device of Wright is a annular ring having a semicircular cross section which is a domed shaped housing.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Both Kletschka et al references and Kolesov et al show similar devices to applicant's.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg, can be reached on (703) 308-3130. The fax phone number for this Group is (703) 308-0758.

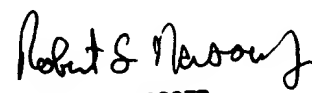
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [max.hindenburg@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN

October 29, 2002

  
ROBERT L. NASSER  
PRIMARY EXAMINER